

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

REID TALLEY,

Petitioner,

v.

Case No. 2:06-cv-288
HON. R. ALLAN EDGAR

J. WHITE,

Respondent.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on July 24, 2009. The Report and Recommendation was duly served on the parties. The Court has received objections from petitioner. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Petitioner asserts that there was insufficient evidence to convict him at trial and that it was physically impossible for the witnesses to observe petitioner enter the apartment forcefully. The testimony and evidence presented at trial, considered in the light most favorable to the prosecution, clearly was sufficient to support petitioner's conviction. While petitioner may have another view of the evidence and a counter argument to the weight of the evidence presented, petitioner's arguments are insufficient to show that the evidence presented could not support his

conviction. Similarly, petitioner has not shown ineffective assistance of trial or appellate counsel or that prosecutorial misconduct occurred in this case.

To extent that petitioner wants discovery in this matter, petitioner's request is not appropriate. Petitioner had a trial in this case and was found guilty. Petitioner had the opportunity to present witnesses, to cross examine witnesses, and to present evidence. No further discovery is necessary in this habeas proceeding.

Petitioner argues that the report's reliance on the Michigan Court of Appeals' decision denied petitioner due process. Petitioner's burden is to establish that the Michigan Court of Appeals' decision resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States; or resulted in a decision that was based upon an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. Petitioner has failed in his burden.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #83) is approved and adopted as the opinion of the Court and the petition will be dismissed with prejudice.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED as to each issue raised by the petitioner in this application for habeas corpus relief because petitioner has failed to make a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Dated: 9/23/09

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE